

**§ 20-308.15. Prohibited contractual requirements imposed by manufacturer, distributor, or captive finance source.**

It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this State to agree to any terms, conditions, or requirements that are set forth in subdivisions (1) through (8) below in order for any such dealer to sell to any captive finance source (defined below) any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers ("contract for sale or lease"), or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in North Carolina and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch ("captive finance source"):

- (1) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.
- (2) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.
- (3) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subdivisions (1) through (8) of this section, or (ii) the subject dealer's violation of applicable law. For purposes of this section, the dealer may, however, contractually obligate itself to warrant the accuracy of the information provided on the finance contract, but such warranty can only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors on the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

- (4) Notwithstanding the terms of any contract or agreement, treat a dealer's breach of an agreement between the dealer and a captive finance source with respect to the captive finance source's purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach, in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.
- (5) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.
- (6) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.
- (7) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit (i) reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself; (ii) a delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or (iii) a chargeback to a dealer (or offset of any amounts otherwise payable to a dealer by the captive finance source) for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited under subdivisions (1) through (8) of this section.
- (8) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable, to the extent that it violates this section, at any time at the election of the dealer. (2005-409, s. 3.)